

GEORGIA RESIDENTIAL MORTGAGE ACT

ARTICLE 13

Licensing of Mortgage Lenders and Mortgage Brokers



GEORGIA DEPARTMENT OF BANKING AND FINANCE

REVISED
July 1, 2007

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7-1-1000. Definitions.

As used in this article, the term:

(1) "Affiliate" or "person affiliated with" means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 20 percent or more of the combined voting power of all classes of voting securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.

(2) "Audited financial statement" means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant or by an independent Georgia registered public accountant considered acceptable by the department, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.

(3) "Commitment" or "commitment agreement" means a statement by a lender required to be licensed or registered under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(4) "Control," including "controlling," "controlled by," and "under common control with," means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(6) "Extortionate means" means the use or the threat of violence or other criminal means to cause harm to the person, reputation of the person, or property of the person.

(6.1) "Georgia Residential Mortgage Act" means this article.

(7) "License" means a license issued by the department under this article to act as a mortgage lender or mortgage broker.

(8) "Lock-in agreement" means a written agreement whereby a lender or a broker required to be licensed or registered under this article guarantees for a specified number of days or until a specified date the availability of a specified rate of interest for a mortgage loan, a specified formula by which the rate of interest will be determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(9) "Makes a mortgage loan" means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(10) "Misrepresent" means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

(11) "Mortgage broker" means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others, or offers to solicit, process, place, or negotiate mortgage loans for others or who closes mortgage loans which may be in the mortgage broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loans to the mortgage lenders providing the funding of such loans.

(12) "Mortgage lender" means any person who directly or indirectly makes, originates, or purchases mortgage loans or who services mortgage loans.

(13) "Mortgage loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.

(14) "Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(15) "Registrant" means any person required to register pursuant to Code Sections 7-1-1001 and 7-1-1003.2.

(16) "Residential property" means improved real property used or occupied, or intended to be used or occupied, as the principal residence of a natural person. Such term does not include rental property or second homes.

(17) "Service a mortgage loan" means the collection or remittance for another or the right to collect or remit for another of payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(18) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof.

(Code 1981, § 7-1-1000, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 1; Ga. L. 1996, p. 848, § 13; Ga. L. 1997, p. 143, § 7; Ga. L. 1997, p. 485, §§ 29, 30; Ga. L. 2000, p. 174, § 22; Ga. L. 2005, p. 826, § 29/SB 82; Ga. L. 2005, p. 1030, § 13/SB 55.)

7-1-1001. Exemption for certain persons and entities; registration requirements.

The following persons shall not be required to obtain a mortgage broker or mortgage lender license and shall not be subject to the provisions of this article but may be subject to registration or notification requirements, unless otherwise provided by this article:

(1) Any lender authorized to engage in business as a bank, credit card bank, savings institution, building and loan association, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured;

(2) Any wholly owned subsidiary of any lender described in paragraph (1) of this Code section; provided, however, such subsidiary shall be subject to the filing of a notification statement in order to facilitate the department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.4. Any subsidiary which fails to file the notification statement or keep the information current will immediately be subject to the registration requirements of this article. In addition, any

subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

(2.1) Any wholly owned subsidiary of any bank holding company; provided, however, such subsidiary shall be subject to registration requirements in order to facilitate the department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3;

(3) An attorney at law licensed to practice law in Georgia who is not principally engaged in negotiating mortgage loans when such attorney renders services in the course of his or her practice as an attorney at law;

(4) A real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans; however, a real estate broker or real estate salesperson who receives any fee, commission, kickback, rebate, or other payment for directly or indirectly negotiating, placing, or finding a mortgage for others shall not be exempt from the provisions of this article;

(5) Any person performing any act relating to mortgage loans under order of any court;

(6) Any natural person or the estate of or trust created by a natural person making a mortgage loan with his or her own funds for his or her own investment, including those natural persons or the estates of or trusts created by such natural persons who make a purchase money mortgage for financing sales of their own property;

(7) The United States of America, the State of Georgia or any other state, and any agency, division, or corporate instrumentality of any governmental entity, including without limitation: the Georgia Housing and Finance Authority, the Georgia Development Authority, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit Administration and its chartered agricultural credit associations;

(8) Any person who makes a mortgage loan to an employee of such person as an employment benefit;

(9) Any licensee under Chapter 3 of this title, the "Georgia Industrial Loan Act," provided that any mortgage loan made by such licensee is for \$3,000.00 or less;

(10) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

(11) A natural person employed by a licensed mortgage broker, a licensed mortgage lender, or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor. To be exempt, a natural person must be employed by only one such employer and must be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;

(12) Any person who purchases mortgage loans from a mortgage broker or mortgage lender solely as an investment and who is not in the business of brokering, making, purchasing, or servicing mortgage loans; or

(13) Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article.

(14)(A) A natural person otherwise required to be licensed, who is under an exclusive written independent contractor agreement with any person that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, which subsidiary also meets the following requirements, subject to the review and approval of the department:

(i) The subsidiary has provided an undertaking of accountability supported by a surety bond equal to the lesser of \$1 million or \$50,000.00 per exempt person, to cover all of its persons exempted by this paragraph, that includes full and direct financial responsibility for the mortgage broker activities of each such exempted person, and also provides for the education of the exempt persons, the handling of consumer complaints related to the exempt persons, and the supervision of the mortgage broker activities of the exempt persons;

(ii) The subsidiary has applied for and been granted a mortgage broker or mortgage lender license, consistent with the provisions of this article and renewable annually; and

(iii) The subsidiary has paid applicable fees for this license, which license fees shall be the lesser of one-half of the sum of the cost of the individual licenses or \$100,000.00.

(B) To maintain the exemption, a natural person must:

(i) Solicit, process, place, or negotiate a mortgage loan to be made only by the licensed subsidiary or its affiliate; and

(ii) Be at all times in compliance with the provisions and prohibitions of Code Section 7-1-1013 and the provisions and prohibitions applicable to employees under Code Section 7-1-1004.

(C) For purposes of this paragraph, 'financial holding company' shall mean a financial holding company as defined in the Bank Holding Company Act of 1956, as amended.

(D) The commissioner shall provide by rule or regulation for the implementation of this paragraph.

(Code 1981, § 7-1-1001, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 2; Ga. L. 1996, p. 848, § 14; Ga. L. 1997, p. 485, § 31; Ga. L. 1999, p. 674, § 30; Ga. L. 2000, p. 174, § 23; Ga. L. 2003, p. 843, § 16; Ga. L. 2006, p. 750, § 1/SB 505.)

7-1-1002. Transaction of business without a license, registration or exemption prohibited; knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender prohibited; liability of persons controlling violators.

(a) On and after July 1, 1993, it is prohibited for any person to transact business in this state directly or indirectly as a mortgage broker or a mortgage lender unless such person:

(1) Is licensed or registered as such by the department;

(2) Is a person exempted from the licensing or registration requirements pursuant to Code Section 7-1-1001; or

(3) In the case of an employee of a mortgage broker or mortgage lender, such person has qualified to be relieved of the necessity for a license under the employee exemption in paragraph (11) of Code Section 7-1-1001.

(b) On and after July 1, 1995, it is prohibited for any person, as defined in Code Section 7-1-1000, including a corporation but not including any natural person who purchases five or fewer mortgage loans in any one calendar year solely as an investment and who is not in the business of brokering, making, purchasing or servicing mortgage loans, knowingly to purchase, sell, or transfer one or more mortgage loans or loan applications from or to a mortgage broker or mortgage lender who is neither licensed nor exempt from the licensing or registration provisions of this article. Such a purchase shall not affect the obligation of the borrower under the terms of the mortgage loan. The department shall provide for distribution or availability of information regarding approved or revoked licenses.

(c) On or after July 1, 1996, every person who directly or indirectly controls a person who violates subsection (a) or (b) of this Code section, every general partner, executive officer, joint venturer, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person, unless the person whose violation arises under this subsection sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

(Code 1981, § 7-1-1002, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1995, p. 673, § 33; Ga. L. 1996, p. 848, § 15; Ga. L. 1998, p. 795, § 28; Ga. L. 2000, p. 174, § 24; Ga. L. 2003, p. 843, § 17.)

7-1-1003. Applications for licenses.

(a) An application for a license under this article shall be made in writing, under oath, and in such form as the department may prescribe. The department, by regulation, may prescribe different classes of licenses for both mortgage brokers and mortgage lenders.

(b) The application shall include the following:

(1) The legal name and address of the applicant and, if the applicant is a partnership, association, corporation, or other business entity, of every member, officer, and director thereof;

(2) The name under which the applicant will conduct business in Georgia;

(3) The address of the main office or principal place of business where books and records are located and any other locations at which the applicant will engage in any business activity covered by the provisions of this article, together with the mailing address where the department shall send all correspondence, orders, or notices. Any changes in this mailing address must be delivered in writing to the department before the change is effective;

(4) The complete name and address of the applicant's initial registered agent and registered office for service of process in Georgia. If the applicant is a Georgia corporation, this registered agent shall be the same as the agent recorded with the Secretary of State. Any changes in the registered agent or registered office shall be delivered in writing to the department and the Secretary of State, if applicable, before the change is effective. The registered agent may, but is not required to, be an officer of the applicant, and the registered office must be a Georgia location where the registered agent may be served;

(5) The general plan and character of the business;

(6) A financial statement of the applicant;

(7) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, agents, or ultimate equitable owners of 10 percent or more of the applicant; and

(8) For mortgage brokers, evidence of satisfaction of experience or education requirements, as required by regulations of the department.

(c) The application shall be filed together with:

(1) Investigation and supervision fees established by regulation. The investigation fee shall not be refundable; provided, however, any supervision fee paid at the time of the application shall be refunded if the license is not granted; and

(2) The items required by Code Section 7-1-1003.2.

(Code 1981, § 7-1-1003, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 3; Ga. L. 1996, p. 848, § 16; Ga. L. 1999, p. 674, § 31; Ga. L. 2000, p. 174, § 25; Ga. L. 2001, p. 970, § 10; Ga. L. 2005, p. 826, § 30/SB 82.)

7-1-1003.1. Physical place of business.

If the applicant for a mortgage broker license or a renewal of such license does not have a physical place of business in Georgia, a license or renewal may only be issued if the applicant's home state does not require that in order to be licensed a mortgage broker must have a physical place of business in such home state. In either case, an applicant must have a registered agent and a registered office in this state.

(Code 1981, § 7-1-1003.1, enacted by Ga. L. 1998, p. 590, § 1; Ga. L. 1999, p. 674, § 32.)

7-1-1003.2. Financial requirements for licensing and registration; bond requirements.

(a) Each licensed mortgage broker must provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as the department may require and the bond shall meet the other requirements of subsection (c) of this Code section.

(b) Except as otherwise provided in subsection (c) of this Code section, the department shall not license or register any mortgage lender unless the applicant or registrant provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of \$150,000.00 or such greater sum as the department may require and which bond shall meet the other requirements of subsection (c) of this Code section.

(c) Bond requirements:

(1) The bond requirements for mortgage brokers and lenders are continuous in nature and must be maintained at all times as a condition of licensure; and

(2) The corporate surety bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with this article, the "Georgia Residential Mortgage Act," or with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws.

(d) As an alternative to a bond, an applicant or a licensee may supply an irrevocable letter of credit from a federally insured financial institution in form and terms acceptable and payable to the department.

(e) Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond or this article, the “Georgia Residential Mortgage Act,” may proceed on such bond against the principal or surety thereon, or both, to recover damages.

(Code 1981, § 7-1-1003.2, enacted by Ga. L. 2000, p. 174, § 26; Ga. L. 2001, p. 970, § 11; Ga. L. 2003, p. 843, § 18; Ga. L. 2004, p. 458, § 11; Ga. L. 2005, p. 826, § 31/SB 82.)

7-1-1003.3. Application for registration.

An application to register as a mortgage lender or broker under this article shall be made annually in writing, under oath, on a form provided by the department, subject to requirements specified by rules and regulations of the department.

(Code 1981, § 7-1-1003.3, enacted by Ga. L. 2000, p. 174, § 26; Ga. L. 2004, p. 458, § 12.)

7-1-1003.4. Notification statement.

(a) A notification statement shall contain the following:

(1) The name or names under which business will be conducted in Georgia;

(2) The name and address of the parent financial institution;

(3) The name, mailing address, telephone number, and fax number of the person or persons responsible for handling consumer inquiries and complaints;

(4) The name and address of the registered agent for service of process in Georgia; and

(5) A statement signed by the president or chief executive officer of the entity stating that the entity will receive and process consumer inquiries and complaints promptly, fairly, and in compliance with all applicable laws.

(b) A notification statement shall be filed before commencing to do a mortgage business in this state and shall be updated by the entity as the information changes. Any entity which fails to file the notification statement or keep the information current will immediately be subject to the registration requirements of Code Section 7-1-1003.3.

(Code 1981, § 7-1-1003.4, enacted by Ga. L. 2000, p. 174, § 26.)

7-1-1004. Investigation of applicant and its officers; audit; education, experience, and other requirements relative to licensees and registrants.

(a) Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the applicant and the individuals who direct the affairs or establish policy for the applicant, including the officers, directors, or the equivalent, are of good character and ethical reputation; that the applicant and such persons meet the requirements of subsection (d) of this Code section; that the applicant and such persons demonstrate reasonable financial responsibility; that the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the applicant has and maintains a registered agent for service in this state.

(b) The department shall not license any applicant unless it is satisfied that the applicant may be expected to operate its mortgage lending or brokerage activities in compliance with the laws of this state and in a manner which protects the contractual and property rights of the citizens of this state.

(c) The department may establish by rule or regulation minimum education or experience requirements for an applicant for a mortgage broker license or renewal of such a license.

(d) The department may not issue or may revoke a license if it finds that the applicant or licensee, or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee, has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state.

(e) The department shall be authorized to obtain conviction data with respect to any applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant and any individual who directs the affairs of the company or establishes policy. The department shall submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, together with the required records search fees and such other information as may be required. Fees for background checks that the department administers shall be sent to the department by applicants and licensees together with the fingerprints. Applicants and licensees shall have the primary responsibility for obtaining background checks of covered employees which are defined as employees who work in this state and also have the authority to enter, delete, or verify any information on any mortgage loan application form or document. The department shall, however, retain the right to obtain conviction data on covered employees.

(f) Every licensee and applicant shall be authorized and required to obtain background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Licensees and applicants shall be responsible for any applicable fees charged by the center. A background check must be initiated for a person in the employ of a licensee or applicant within ten days of the date of initial hire and be completed with satisfactory results within the first 90 days of employment. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (e) of this Code section.

(g) Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search

of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department or by the applicant or licensee shall be used by the party requesting such data for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. The department shall be entitled to review any applicant's or licensee's files to determine whether the required background checks have been run and whether all covered employees are qualified. The department shall be authorized to discuss the status of employee background checks with licensees. All such records shall be maintained by the department and the applicant or licensee pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought, subject to the conditions set forth in subsection (d) of this Code section. Violation of this Code section may subject a licensee to the revocation of its license.

(h) The department may deny or revoke a license or otherwise restrict a license if it finds that the applicant or any person who is a director, officer, partner, or ultimate equitable owner of 10 percent or more or person who directs the company's affairs or who establishes policy of the applicant has been in one or more of these roles as a mortgage lender, broker, or registrant whose license has been denied, revoked, or suspended within three years of the date of the application.

(i) The department may not issue a license to and may revoke a license from an applicant or licensee if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years, if such order was based on a violation of Code Section 7-1-1013 or based on the conducting of a mortgage business without a required license, or whose license has been revoked within five years of the date such person was hired. Each applicant and licensee shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of cease and desist order described in this subsection.

(j) Within 90 days after receipt of a completed application and payment of licensing fees prescribed by this article, the department shall either grant or deny the request for license.

(k) A person shall not be indemnified for any act covered by this article or for any fine or penalty incurred pursuant to this article as a result of any violation of the law or regulations contained in this article, due to the legal form, corporate structure, or choice of organization of such person, including but not limited to a limited liability company.

(Code 1981, § 7-1-1004, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 4; Ga. L. 1996, p. 848, § 17; Ga. L. 1998, p. 795, § 29; Ga. L. 1999, p. 674, § 33; Ga. L. 2000, p. 174, § 27; Ga. L. 2001, p. 4, § 7; Ga. L. 2001, p. 970, § 12; Ga. L. 2002, p. 1220, § 11; Ga. L. 2003, p. 843, § 19; Ga. L. 2004, p. 458, § 13; Ga. L. 2004, p. 631, § 7; Ga. L. 2005, p. 826, § 32/SB 82.)

7-1-1005. Renewal of licenses and registrations.

(a) Except as otherwise specifically provided in this article, all licenses and registrations issued pursuant to this article shall expire on June 30 of each year and application for renewal shall be made annually on or before April 1 of each year.

(b) Any licensee or registrant making proper application, including all supporting documents, moneys owed to the department, and all applicable fees required by this article and any regulations promulgated by the department, for a license or registration renewal to operate during the following license year and

filing the application prior to April 1 shall be permitted to continue to operate pending final approval or disapproval of the application for the license or registration renewal for the following year if final approval or disapproval is not granted prior to July 1.

(c) No investigation fee shall be payable in connection with the renewal application, but an annual license or registration fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded or prorated if the renewal application is approved.

(d) Any person holding a license or registration pursuant to this article who fails to file a proper application for a license or registration renewal for the following license year, including the proper fee accompanying the application, on or before April 1 and who files an application after April 1 may be required to pay, in addition to the license or registration fees, a fine in an amount to be established by regulations promulgated by the department.

(Code 1981, § 7-1-1005, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 5; Ga. L. 2000, p. 174, § 28; Ga. L. 2001, p. 970, § 13; Ga. L. 2005, p. 826, § 33/SB 82.)

7-1-1006. Contents of license; posting of license; transferring of license; transacting business under other name; change of address; opening additional office without prior approval; approval of branch manager.

(a) Each license issued under this article shall state the name of the licensee.

(b) A licensee shall post a copy of such license in a conspicuous place in each place of business of the licensee.

(c) A license may not be transferred or assigned.

(d) No licensee shall transact business under any name other than that designated in the license.

(e) Each licensee shall notify the department in writing of any change in the address of the principal place of business or of any additional location of business in Georgia, any change in registered agent or registered office, any change of executive officer, contact person for consumer complaints, or ultimate equitable owner of 10 percent or more of any corporation or other entity licensed under this article, or of any material change in the licensee's financial statement. Notice of changes must be received by the department no later than 30 business days after the change is effective.

(f) No licensee shall open a new additional office in Georgia without prior approval of the department. Applications for such additional office shall be made in writing on a form prescribed by the department and shall be accompanied by payment of a \$350.00 nonrefundable application fee. The application shall be approved unless the department finds that the applicant has not conducted business under this article efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within 45 days of the date the application is received by the department.

(g) All branch managers in Georgia must be approved by the department. A licensee may place a new branch manager subject to the department's approval but must file for approval within 15 days of the placement and must remove the person immediately should the department deny approval.

(Code 1981, § 7-1-1006, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 97, § 7; Ga. L. 1994, p. 570, § 6; Ga. L. 1999, p. 674, § 34; Ga. L. 2000, p. 174, § 29; Ga. L. 2005, p. 826, § 34/SB 82.)

7-1-1007. Licensee to give notice of certain actions brought against it by a creditor or borrower; notice to the department of cancellation of bond.

(a) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of any action which may be brought against it by any creditor or borrower where such action is brought under this article, involves a claim against the bond filed with the department for the purposes of compliance with Code Section 7-1-1003 or 7-1-1004, or involves a claim for damages in excess of \$25,000.00 for a broker and \$250,000.00 for a lender and of any judgment which may be entered against it by any creditor or any borrower or prospective borrower, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such judgment.

(b) A corporate surety shall, within ten days after it pays any claim to any claimant, give notice to the department by registered or certified mail or statutory overnight delivery of such payment with details sufficient to identify the claimant and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the licensee shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-1003 or 7-1-1004 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-1003 or 7-1-1004 may not be canceled by either the licensee or the corporate surety except upon notice to the department by registered or certified mail or statutory overnight delivery with return receipt requested, the cancellation to be effective not less than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

(d) A licensee or registrant shall, within ten days after knowledge of the event, report in writing to the department:

- (1) Any knowledge or discovery of an act prohibited by Code Section 7-1-1013; and
- (2) The discharge of any employee for dishonest or fraudulent acts.

Any person reporting such an event shall be protected from civil liability as provided in Code Section 7-1-1009.

(Code 1981, § 7-1-1007, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1999, p. 674, § 35; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1220, § 12.)

7-1-1008. Acquisition of 10 percent or more of the voting shares or of the ownership of any other entity licensed to conduct business under this article.

(a) Except as provided in this Code section, no person shall acquire directly or indirectly 10 percent or more of the voting shares of a corporation or 10 percent or more of the ownership of any other entity licensed to conduct business under this article unless it first:

(1) Files an application with the department in such form as the department may prescribe from time to time;

(2) Delivers such other information to the department as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and officers, if a corporation, and its members, if applicable, and of any proposed new directors, officers, or members of the licensee; and

(3) Pays such application fee as the department may prescribe.

(b) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the licensee if it finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The department shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the department reciting the reasons for the extension. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(c) The provisions of this Code section shall not apply to:

(1) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person licensed by this article or a person exempt from this article under Code Section 7-1-1001;

(2) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee; or

(3) The acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation of law.

The person acquiring an interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the department of such acquisition within 30 days of the closing of such transaction.

(Code 1981, § 7-1-1008, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 7.)

7-1-1009. Maintenance of books, accounts, and records; investigation and examination of licensees and registrants by department; confidentiality; exemptions from civil liability.

(a) Any person required to be licensed or registered under this article shall maintain at its offices or such other location as the department shall permit such books, accounts, and records as the department may reasonably require in order to determine whether such person is complying with the provisions of this article and rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained separately and distinctly from any other personal or unrelated business matters in which the person is involved.

(b) The department may, by its designated officers and employees, as often as it deems necessary, but at least once every 24 months, investigate and examine the affairs, business, premises, and records of any person required to be licensed or registered under this article insofar as such affairs, business, premises, and records pertain to any business for which a license or registration is required by this article. Notwithstanding the provisions of this subsection, the department has the discretion to examine a person less frequently, provided that its record of complaints, comments, or other information demonstrates that person's ability to meet the standards of Code Sections 7-1-1003, 7-1-1003.2, and 7-1-1004. In the case of registrants, the department shall not be required to conduct such examinations if it determines that the registrant has been adequately examined by another bank regulatory agency. In order to avoid unnecessary duplication of examinations, the department may accept examination reports performed and produced by other state or federal agencies, unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

(c) The department, at its discretion, may:

(1) Make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate this article or any rule, regulation, or order under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) Disclose information concerning any violation of this article or any rule, regulation, or order under this article, provided the information is derived from a final order of the department; and

(4) Disclose the imposition of an administrative fine or penalty under this article.

(d)(1) For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.

(2) The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating mortgage lenders or brokers of another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

(e) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(f) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in paragraphs (3) and (4) of subsection (c) of this Code section, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. The department shall compile information on the number of written complaints received on all licensees. The department shall annually disclose to the public the number of such complaints together with the number of Georgia residential mortgage loans made during the same period. In preparing the disclosure, the department shall be authorized to rely upon the number of mortgage loans reported to it in the mortgage license renewal application. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

(1) The name, business address, and telephone, fax, and license numbers of a licensee or registrant;

- (2) The names and titles of the principal officers;
- (3) The name of the owner or owners thereof;
- (4) The business address of a licensee's or registrant's agent for service; and
- (5) The terms of or a copy of any bond filed by a licensee or registrant.

(g) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

- (1) For any information relating to suspected prohibited acts furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;
- (2) For any such information furnished to or received from other persons subject to the provisions of this title; or
- (3) For any such information furnished in complaints filed with the department.

(h) The commissioner or any employee or agent is not subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section.

(Code 1981, § 7-1-1009, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1996, p. 848, § 18; Ga. L. 1998, p. 795, § 30; Ga. L. 1999, p. 674, § 36; Ga. L. 2000, p. 174, § 30; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 970, § 14; Ga. L. 2003, p. 843, § 20.)

7-1-1010. Annual financial statements.

(a) If a mortgage broker is a United States Department of Housing and Urban Development loan correspondent, such broker must also submit to the department the audit that is required for the United States Department of Housing and Urban Development. The department may require the mortgage broker to have made an audit of the books and affairs of the licensed or registered business and submit to the department an audited financial statement if the department finds that such an audit is necessary to determine whether the mortgage broker is complying with the provisions of this article and the rules and regulations adopted in furtherance of this article.

(b) Each mortgage lender licensed or registered under this article shall at least once each year have made an audit of the books and affairs of the licensed or registered business and submit to the department at renewal an audited financial statement, except that a mortgage lender licensed or registered under this article which is a subsidiary shall comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the licensee or registrant which is prepared in accordance with generally accepted accounting principles. A lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially required by the department. An audit must be less than 15 months old to be acceptable. The department may by regulation establish additional minimum standards for audits and reports under this Code section.

(Code 1981, § 7-1-1010, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 8; Ga. L. 1996, p. 848, § 19; Ga. L. 1999, p. 674, § 37; Ga. L. 2000, p. 174, § 31; Ga. L. 2004, p. 458, § 14.)

7-1-1011. Annual fees.

(a) The department may, by regulation, prescribe annual fees to be paid by licensees and registrants, which fees shall be set at levels necessary to defray costs and expenses incurred by the state in providing the examinations and supervision required by this article and which fees may vary according to whether a person is a licensee or registrant or is a mortgage broker or a mortgage lender and according to the class of license issued to a mortgage broker or mortgage lender.

(b)(1) As used in this subsection, the term "collecting agent" means the person listed as the secured party on a security deed or other loan document that establishes a lien on the residential real property taken as collateral at the time of the closing of the mortgage loan transaction.

(2) There shall be imposed on the closing of every mortgage loan subject to regulation under this article which, as defined in Code Section 7-1-1000, includes all mortgage loans, whether or not closed by a licensee or registrant, a fee of \$6.50. The fee shall be paid by the borrower to the collecting agent at the time of closing of the mortgage loan transaction. The collecting agent shall remit the fee to the department at the time and in the manner specified by regulation of the department. Revenue collected by the department pursuant to this subsection shall be deposited in the general fund of the state.

(3) The fee imposed by this subsection shall be a debt from the borrower to the collecting agent until such assessment is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any collecting agent who neglects, fails, or refuses to collect the fee imposed by this subsection shall be liable for the payment of the fee.

(Code 1981, § 7-1-1011, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 9; Ga. L. 1995, p. 673, § 34.)

7-1-1012. Rules and regulations.

Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the enforcement of this article, to effectuate the purposes of this article, and to clarify the meaning of terms.

(Code 1981, § 7-1-1012, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 2001, p. 970, § 15.)

7-1-1013. Prohibition of certain acts.

It is prohibited for any person transacting a mortgage business in or from this state, including any person required to be licensed or registered under this article and any person exempted from the licensing or registration requirements of this article under Code Section 7-1-1001, to:

(1) Misrepresent the material facts, make false statements or promises, or submit false statements or documents likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized documents or other means to the department or anyone;

(2) Misrepresent or conceal or cause another to misrepresent or conceal material factors, terms, or conditions of a transaction to which a mortgage lender or broker is a party, pertinent to an applicant or application for a mortgage loan or a mortgagor;

(3) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan;

(4) Improperly refuse to issue a satisfaction of a mortgage loan;

(5) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage, or other document or thing of value which has come into the possession of the mortgage lender or broker and which is not the property of the mortgage lender or broker, or which the mortgage lender or broker is not in law or at equity entitled to retain;

(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;

(7) Engage in any fraudulent home mortgage underwriting practices;

(8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, loan application, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not available at the time of signing;

(9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, there is a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if the following circumstances can be demonstrated:

(A) Lack of substantial benefit to the borrower;

(B) Lack of probability of full payment of the loan by the borrower; and

(C) A significant proportion of similarly foreclosed loans by such person;

(10) Provide an extension of credit or collect a mortgage debt by extortionate means; or

(11) Purposely withhold, delete, destroy, or alter information requested by an examiner of the department or make false statements or material misrepresentations to the department.

(Code 1981, § 7-1-1013, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1996, p. 848, § 20; Ga. L. 1999, p. 674, § 38; Ga. L. 2000, p. 174, § 32; Ga. L. 2005, p. 826, § 35/SB 82.)

7-1-1014. Regulations governing disclosure required to applicants for mortgage loans.

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purposes of this article, the department shall promulgate regulations governing the disclosure required to be made to applicants for mortgage loans, including, without limitation, the following requirements:

(1) Any person required to be licensed or registered under this article shall provide to each applicant for a mortgage loan prior to accepting an application fee or any third-party fee such as a property appraisal fee, credit report fee, or any other similar fee a disclosure of the fees payable and the conditions under which such fees may be refundable;

(2) Any mortgage lender required to be licensed or registered under this article shall make available to each applicant for a mortgage loan at or before the time a commitment to make a mortgage loan is given a written disclosure of the fees to be paid in connection with the commitment and the loan, or the

manner in which such fees shall be determined and the conditions under which such fees may be refundable; and

(3) Any mortgage lender required to be licensed or registered under this article shall disclose to each borrower of a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the borrower's property through foreclosure. The borrower shall be required to sign the disclosure at or before the time of the closing of the mortgage loan.

The department may prescribe standards regarding the accuracy of required disclosures and may provide for applicable administrative or civil penalties or fines for failure to provide the disclosures or to meet the prescribed standards.

(Code 1981, § 7-1-1014, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 10; Ga. L. 2001, p. 970, § 16.)

7-1-1015. Rules relative to escrow accounts.

The department may promulgate rules with respect to the placement in escrow accounts by any person required to be licensed or registered by this article of any money, fund, deposit, check, or draft entrusted to it by any persons dealing with it as a residential mortgage broker, lender, or servicer.

(Code 1981, § 7-1-1015, enacted by Ga. L. 1993, p. 543, § 1.)

7-1-1016. Regulations relative to advertising.

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purpose of this article, the department shall prescribe regulations governing the advertising of mortgage loans, including without limitation the following requirements:

(1)(A) Advertisements for loans regulated under this article may not be false, misleading, or deceptive. No person whose activities are regulated under this article may advertise in any manner so as to indicate or imply that its interest rates or charges for loans are in any way "recommended," "approved," "set," or "established" by the state or this article;

(B) An advertisement shall not include an individual's loan number, loan amount or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, in sponsorship with, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that loan information contained therein was not provided by the recipient's lender.

(2) All advertisements disseminated by a licensee or a registrant in this state by any means shall contain the name, license number, and an office address of such licensee or registrant, which shall conform to a name and address on record with the department; and

(3) No licensee shall advertise its services in Georgia in any media disseminated in this state, whether print or electronic, without the words "Georgia Residential Mortgage Licensee" or, for those advertisers licensed in more than one state, a listing of Georgia as a state in which the advertiser is licensed.

(Code 1981, § 7-1-1016, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 11; Ga. L. 2002, p. 1220, § 13.)

7-1-1017. Suspension or revocation of licenses; notice; judicial review; effect on preexisting contract.

(a)(1) The department may suspend or revoke an original or renewal license, registration, or mortgage broker education approval on any ground on which it might refuse to issue an original license, registration, or approval or for a violation of any provision of this article or of Chapter 6A of this title or any rule or regulation issued under this article or under Chapter 6A of this title, including failure to provide fees on a timely basis, or for failure of the licensee or registrant to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's or registrant's business in this state as a mortgage lender or mortgage broker or for violation of a final order previously issued by the department.

(2) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action is sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in those Code sections shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in recovering child support when required by law.

(3) Where an applicant or licensee has been found to be a borrower in default as provided in Code Section 20-3-295, such action is sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this article.

(b) Notice of the department's intention to enter an order denying an application for a license or registration under this article or of an order suspending or revoking a license or registration under this article shall be given to the applicant, licensee, or registrant in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant, licensee, or registrant may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying, suspending, or revoking a license or registration shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant. If a person refuses to accept service of the notice or order by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service; and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner.

(c) A licensee or registrant may, at the discretion of and with the consent of the department, agree to a voluntary suspension of its license or registration for a period of time to be agreed upon by the parties. Such order of suspension shall be considered a final order and shall be forwarded to the licensee or registrant in the same manner as any other final order. Grounds for such a voluntary suspension shall be the same as provided in subsection (a) of this Code section, and the licensee or registrant may waive its right to an administrative hearing before issuance of the suspension.

(d) A decision of the department denying a license or registration application, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license or registration shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

(e) Except as otherwise provided by law, a revocation, suspension, or surrender of a license or registration shall not impair or affect the obligation of a preexisting contract between the licensee and another person.

(f) Nothing in this article shall preclude a person whose license or registration has been suspended or revoked from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation for a period not to exceed six months after the date of the final order of the department suspending or revoking the license or registration.

(g) Whenever a person subject to an order of the department fails to comply with the terms of such order which has been properly issued, the department upon notice of three days to such person may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time fixed by the court. Upon the filing of such petition the court shall allow a motion to show cause why such motion should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(h) Whenever the department initiates an administrative action against a current licensee, the department may pursue that action to its conclusion despite the fact that a licensee may withdraw its license or fail to renew it.

(Code 1981, § 7-1-1017, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 12; Ga. L. 1996, p. 453, § 2; Ga. L. 1997, p. 485, § 32; Ga. L. 1998, p. 795, § 31; Ga. L. 1998, p. 1094, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 843, § 21; Ga. L. 2005, p. 826, § 36/SB 82.)

7-1-1018. Cease and desist orders; enforcement procedure; civil penalty; fines.

(a) Whenever it shall appear to the department that any person required to be licensed or registered or required to file a notification statement under this article or employed by a licensee or registrant pursuant to Code Section 7-1-1001 or who would be covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." A cease and desist order to an unlicensed person that orders them to cease doing a mortgage business without the appropriate license shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption or valid employment status during the time of the alleged offense is delivered to the department within the 30 day period, the order shall be rescinded by the department. If a cease and desist order is issued to a person who has been sent a notice of bond cancellation and if the bond is reinstated or replaced and such documentation is delivered to the department within the 30 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received within the 30 days, the license shall expire at the end of the 30 day period and the person shall be required to make a new application for license and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for any subsequent violations. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant to this Code section that is returned to the department as "refused" or unclaimed" shall be deemed as received and sufficiently served.

(b) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court for an order directing such person to obey

the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(c) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the person involved; otherwise, such penalty shall be final except as to judicial review as provided Code Section 7-1-90.

(d) Initial judicial review of the decision of the department entered pursuant to this Code section or Code Section 7-1-1017 shall be available solely in the superior court of the county of domicile of the department.

(e) All penalties and fines recovered by the department as authorized by subsection (g) of this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, if it makes an accounting of all such costs and expenses of recovery in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(f) For purposes of this Code section, the term "person" also includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(g) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article.

(Code 1981, § 7-1-1018, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 13; Ga. L. 1995, p. 673, § 35; Ga. L. 1997, p. 485, § 33; Ga. L. 1999, p. 674, § 39; Ga. L. 2000, p. 174, § 33; Ga. L. 2001, p. 4, § 7; Ga. L. 2003, p. 843, § 22; Ga. L. 2004, p. 631, § 7; Ga. L. 2005, p. 826, § 37/SB 82.)

7-1-1019. Criminal penalties.

Any person and the several members, officers, directors, agents, and employees thereof who:

(1) Shall violate the provisions of subsection (a) of Code Section 7-1-1002, by the willful transaction of a mortgage business without a license or exemption, shall be guilty of a felony punishable as provided in Code Section 7-1-845; or

(2) Shall violate any of the other provisions of this article shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000.00, or by both fine and imprisonment.

(Code 1981, § 7-1-1019, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 97, § 7; Ga. L. 1999, p. 674, § 40.)

7-1-1020. Construction.

Nothing in this article limits any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage business or the right of the state to punish any person for any violation of any law. Without limiting the generality of the foregoing, nothing in this article shall be construed as limiting in any manner the application of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

(Code 1981, § 7-1-1020, enacted by Ga. L. 1993, p. 543, § 1.)

7-1-1021. Regulations governing lock-in and commitment agreements.

The department may promulgate regulations governing the use and contents of lock-in agreements and commitment agreements.

(Code 1981, § 7-1-1021, enacted by Ga. L. 1994, p. 570, § 14.)